

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks, Suite 350
Sacramento, CA 95833
(916) 274-5721
FAX (916) 274-5743



Attachment No. 2

INITIAL STATEMENT OF REASONS**CALIFORNIA CODE OF REGULATIONS**

Title 8: Chapter 4, Subchapter 7, Article 107, Section 5155
of the General Industry Safety Orders

Airborne Contaminants**SUMMARY**

Pursuant to California Labor Code Section 142.3, the Occupational Safety and Health Standards Board (Board) may adopt, amend, or repeal occupational safety and health standards or orders. Section 142.3 permits the Board to prescribe, where appropriate, suitable protective equipment and control or technological procedures to be used in connection with occupational hazards and provide for monitoring or measuring employee exposure for their protection. California Labor Code Section 144.6 requires that the Board, when dealing with standards for toxic materials and harmful physical agents, adopt standards which most adequately assure, to the extent feasible, that no employee suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard for the period of one's working lifetime. This section also requires that the Board base standards on research, demonstrations, experiments and other information as may be appropriate. Labor Code Section 144.6 also lists other considerations such as the latest scientific literature, the reasonableness of the standards, and the experience gained in this and other health and safety laws.

Existing Section 5155 establishes minimum requirements for controlling employee exposure to specific airborne contaminants. This Section specifies several types of airborne exposure limits, requirements for control of skin and eye contact, workplace environmental monitoring through measurement or calculation, and medical surveillance requirements. These requirements were last comprehensively considered and amended between March 1997 and January 2001. Since that time, the body of information and the understanding of harmful effects of the substances listed in Section 5155 and others not listed there have changed.

SPECIFIC PURPOSE AND FACTUAL BASIS OF THE PROPOSED ACTION

In accordance with Labor Code Section 144.6, the purpose of this amendment to Section 5155 is to regulate employee exposure to toxic materials such that, to the extent feasible, the health or functional capacity of the employee is not materially impaired. This proposal was developed and presented to the

Board by the Division of Occupational Safety and Health (Division) pursuant the Division's independent mandate to maintain surveillance and propose standards to the Board in accordance with Labor Code Section 147.1. The Division has developed and presented similar proposals to the Board periodically in the past, normally at approximately three-year intervals. The Division, in developing proposals, has in these cases relied in part on changes made to the American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values (TLVs) to indicate substances to be considered for change. The development of the current proposal is consistent with this past practice and uses the accumulated changes of the ACGIH for the years 1997, 1998, 1999, 2000, and 2001. The substances for which TLVs were changed during this period serve as a base list of substances for development of the current proposal. The ACGIH changes to TLVs are used to produce the base list for consideration for several reasons. The ACGIH TLVs are the most comprehensive single source of exposure limits available, the ACGIH TLVs are substantiated by available documentation, and there is ongoing review of the TLVs by the ACGIH with annual revision.

The Division, in developing the current and past proposals, has convened advisory committees to consider and make recommendations on the substances in the base list. The Airborne Contaminants Advisory Committee (Committee), which considered substances for development of this proposal, met ten times between May 2001 and November 2002. The Committee independently evaluated the changes made to TLVs using the ACGIH documentation, presentations and additional documentation provided by interested parties, documents referred to in the ACGIH documentation, and other documents provided by the members of the Committee.

In many cases, the Committee's recommendations agreed with the rationale and limits set by the ACGIH, in some cases, the Committee made recommendations not in agreement with the ACGIH limits, and in other cases, the Committee used a different basis than the one used by the ACGIH. The Committee's recommendations were made on the basis of consensus of opinion among the members.

The following is a discussion of the specific changes to Table AC-1 in the order that they occur in the proposal. The ACGIH documents, minutes of the ten Advisory Committee meetings, other documents and reasons listed below form the factual basis for this proposal.

The Permissible Exposure Limit (PEL) for Acetone is proposed to be lowered from 750 parts per million (ppm) to 250 ppm based on a study by Nelson et al. indicating that 200 ppm was the highest concentration estimated as satisfactory by human volunteers for an eight hour period (ref 11). The current Short Term Exposure Limit (STEL) is also proposed to be lowered from 1000 ppm to 500 ppm based on nose and throat irritation noted at 500 ppm in subjects exposed for 3 to 5 minutes. This was also observed in the Nelson et al. study. The proposed limits were recommended by the Committee and differ from the ACGIH TLVs of 500 ppm and 750 ppm STEL adopted in 1997. The Committee felt that a 500 ppm 8 hour limit was inappropriate given the effects seen at that level. The effects are described in the ACGIH documentation for the Acetone TLV and the NIOSH criteria document for ketones (ref 12, NIOSH 78-173). The proposed change is necessary to protect employees from these irritant effects.

The PEL for Acrolein is proposed to be changed from 0.1 ppm as an eight-hour time weighted average to 0.1 ppm (45 mg/M³) as a ceiling limit. The current STEL of 0.3 ppm is deleted, as the new limit is a ceiling value. A skin notation is also proposed to control toxic effects due to direct absorption through intact skin. The change to the eight-hour time weighted average is necessary to control nasal and eye irritation. This limit was adopted by the ACGIH in 1998, and is consistent with the recommendation of the Committee. The proposed limit is supported by the ACGIH document for Acrolein.

The PEL for Allyl alcohol is proposed to be lowered from 2 ppm to 0.5 ppm (1.25 mg/M³). The change is necessary to control liver toxicity based on the effects seen in laboratory animals. The change is also intended to control ocular and respiratory tract irritation. This limit was adopted by the ACGIH in 1999, and is consistent with the recommendation of the Committee. The proposed limit is supported by the ACGIH document for Allyl alcohol.

3-Amyl acetate; see Pentyl acetate

n-Amyl Acetate; see Pentyl acetate

sec-Amyl acetate (all Isomers and mixtures); see Pentyl acetate

tert-Amyl acetate; see Pentyl acetate

The PEL for Beryllium and beryllium compounds is proposed to be lowered from 0.002 mg/M³ to 0.1 ug/M³ as total dust. The proposed limit was recommended by the Committee and differs from both the current ACGIH TLVs of 0.002 mg/M³ as total dust and the proposed change to the ACGIH TLV of 0.2 ug/M³ as an inhalable fraction. The Committee based its recommendation primarily on a 1996 study by Kreiss (ref 13) which studied the levels of beryllium disease among 136 workers at a beryllium ceramics plant. The study found that 5.9% of employees were sensitized to beryllium as indicated by the beryllium lymphocyte proliferation blood test, and that 4.4% of employees had granulomatus disease on transbronchial lung biopsy. This plant took 4133 breathing zone samples with a median value of 0.3 ug/M³. The Committee also referred to a study of community cases in the vicinity of beryllium production plant, Eisenbud 1949 (ref 14), where beryllium disease had been observed with 24-hour exposures estimated near 0.01 ug/M³. These studies are additional support for the recommended PEL of 0.1 ug/M³ as total dust. The proposed limit is necessary to prevent sensitizations and beryllium disease. The existing footnote for the Beryllium and Beryllium compounds is deleted. The proposed limit for Beryllium makes the existing footnote moot.

The PEL for 2-Butoxyethanol is proposed to be lowered from 25 ppm to 10 ppm based on eye and nose irritation in human volunteer exposures at 200 ppm (ref 15). Two human volunteers exposed to 113 ppm 2-butoxyethanol for four hours experienced nasal and ocular irritation, a disagreeable metallic taste, and a slight increase in nasal mucous discharge. Four to six hours later, one of these men reported that he felt as though he had "smoked too many cigarettes;" although none had been used. The

important study here is the 113 ppm four hour result. The Committee wanted to provide a margin that would produce no effects, as opposed to the effects seen at 200 and 113. The proposed limit was recommended by the Committee and differs from the 20 ppm TLV adopted by the ACGIH in 1999. The Committee considered the hemolysis seen in some animal species and agreed with the conclusion drawn by the ACGIH in its documentation for 2-Butoxyethanol, that hemolysis was not a significant consideration for human exposure. The proposed limit is necessary to protect employees from the eye and nose irritation.

The PEL for Butyl acrylate is proposed to be lowered from 10 ppm to 2 ppm (11 mg/M³) based on a no effects level of 25 ppm for maternal and embryotoxicity in rats. The proposed level is also intended to control the ocular and respiratory irritancy of this substance. This limit was adopted by the ACGIH in 1999, and is consistent with the recommendation of the Committee. The proposed limit is supported by the ACGIH document for Butyl acrylate and is necessary to control possible reproductive and irritant effects.

A 300 ppm STEL (1057 mg/M³) is proposed to be added to the PEL for Diethyl ketone. The STEL is necessary to control short-term skin and eye irritation and to be consistent with the exposure limits for this substance's isomer, methyl propyl ketone. This limit was adopted by the ACGIH in 1998, and is consistent with the recommendation of the Committee. The proposed limit is supported by the ACGIH document for Diethyl ketone.

The current STEL for Di-sec-octyl phthalate is proposed to be deleted. This change is based on a review of this substance for short-term effects by the ACGIH and a conclusion that the STEL for this substance could not be justified. This change was adopted by the ACGIH in 1998, and is consistent with the recommendation of the Committee. The proposed deletion is supported by the ACGIH document for Di-sec-octyl phthalate.

The PEL for Epichlorohydrin is proposed to be lowered from 2 ppm to 0.05 ppm based on reproductive toxicity at levels above 5 ppm seen in laboratory animals. The proposed limit was recommended by the Committee and differs from the 0.5 ppm TLV adopted by the ACGIH in 1997. The Committee noted that the International Agency for Research on Cancer (IARC) considers this substance a probable human carcinogen, and that the reproductive and respiratory effects seen had been confirmed in multiple studies cited in the ACGIH document, Sanodanoto, J. (1980), Gage, J.C. (1959), and John, J.A. (1982). The Committee members thought that there was insufficient margin between the reproductive effects seen in animals and the ACGIH threshold limit value and recommended the 0.05 ppm limit on the basis that it would reduce the risk of this outcome. The proposed change is necessary to control reproductive and respiratory effects and the possibility of carcinogenic effects.

A STEL is proposed to be added for Ethyl butyl ketone at 75 ppm (345 mg/M³) to control possible narcosis and eye irritation. This limit was adopted by the ACGIH in 1998, and is consistent with the

recommendation of the Committee. The proposed limit is supported by the ACGIH document for Ethyl butyl ketone and is necessary to protect employees from narcosis and eye irritation.

A new PEL for Ethyl cyanoacrylate is proposed at 0.2 ppm (1.02 mg/M³). The proposed limit is necessary to control respiratory irritation and possible respiratory sensitization that has been associated with this and the structurally similar compound, methyl cyanoacrylate. The proposed limit was adopted by the ACGIH in 1995 and is consistent with the recommendation of the Committee. The proposed limit is supported by the ACGIH document for Ethyl cyanoacrylate.

A new PEL for Ethyl tert-butyl ether is proposed at 5 ppm (21 mg/M³). This proposed limit is necessary to control pulmonary function deficits seen in human volunteers at 50 ppm and the possibility of reproductive and neurotoxicity seen in laboratory animals at levels above 500 ppm. This limit was adopted by the ACGIH in 2000, and is consistent with the recommendation of the Committee. The proposed limit is supported by the ACGIH document for Ethyl tert-butyl ether.

A new PEL for Flour dust is proposed at 0.5 mg/M³. This limit is based on the inhalable fraction of Flour dust suspended in air and will be measured using sampling apparatus that meet a set of criteria specified in a new footnote (p) for Table AC-1. This proposed limit is necessary to control pulmonary function deficits and asthmatic symptoms seen at levels above 1.35 mg/M³. This 0.5 mg/M³ limit was adopted by the ACGIH in 2000, and is consistent with the recommendation of the Committee. The proposed limit is supported by the ACGIH document for Flour dust. This new footnote replaces the existing footnote at (p). The existing footnote for the Beryllium and Beryllium compounds is deleted as previously noted under Beryllium. The proposed limit for Beryllium makes the existing footnote moot.

The Ceiling limit for Glutaraldehyde is proposed to be lowered from 0.2 ppm (0.82 mg/M³) to 0.015 ppm (0.062 mg/M³). The proposed limit is necessary to control sensitization and the development of asthmatic reactions to this compound. The proposed limit is lower than the limit of 0.05 ppm adopted as a TLV by the ACGIH in 1997. The proposed limit was recommended by the Committee after review of the ACGIH documentation for the glutaraldehyde TLV and more recent studies of this compound not considered by the ACGIH. One of these more recent studies, Di Stefano 1999 (ref 16), reported on development of asthma in 24 healthcare workers whose short term exposures ranged from 0.014 ppm to 0.2 ppm. The results of the Di Stefano study are consistent with the results of an earlier study by Gannon 1995 (ref 22). The Gannon study confirmed asthmatic reactions by a positive bronchial challenge in seven of eight healthcare workers. Six of the seven with confirmed reaction had no prior history of asthma. The median exposure level for short-term samples taken by Gannon in operations that produce peak levels of exposure was 0.039 ppm. This median value was very near the median value of the short-term measurements by Di Stefano, 0.034 ppm. The reactions to bronchial challenge in both the Di Stefano and Gannon studies were delayed from challenge to reaction; in many cases the reaction took more than 30 minutes to appear. Another study Vyas 2000 (ref 23) studied a large group of current and ex-employees in healthcare and did not find work related asthma associated with glutaraldehyde exposure. The exposure concentrations measured in this study were lower than those measured by Di Stefano and Gannon. The Vyas study had a geometric mean value for peak

short-term measurements of 0.015 ppm. Vyas noted that the current employee results showed a significant difference compared to the ex-employees in their work related symptoms suggesting that the current workers were a survivor population.

Isoamyl acetate; see Pentyl acetate

The PEL for Maleic anhydride is proposed to be lowered from 0.25 ppm (1 mg/M³) to 0.1 ppm (0.4 mg/M³). The proposed limit is necessary to prevent the development of asthma and sensitization to this compound. Inflammation and metaplastic lesions have been observed in the nasal mucosa of rats and hamsters exposed to levels as low as 0.27 ppm. The harmful effects seen in rats and hamsters at levels just above the current PEL indicate that the current PEL is not sufficiently protective. The 0.1 ppm limit for Maleic anhydride was adopted by the ACGIH in 2000, and is consistent with the recommendation of the Committee. The proposed limit is supported by the ACGIH document for Maleic anhydride.

2-Methylbutyl acetate; see Pentyl acetate

The PEL for Methyl methacrylate is proposed to be lowered from 100 ppm (410 mg/M³) to 20 ppm (82 mg/M³). The proposed limit was recommended by the Committee and differs from the 50 ppm TLV adopted by the ACGIH in 2000. The change is necessary to prevent decreased lung capacity, cough and throat irritation observed in several studies at levels below the current TLV. The Committee referred to the following studies as the basis for its recommendation: Marez, T. 1993 (ref 17), Jedrychowski, W. 1982 (ref 18), and Mizunuma, K. 1993 (ref 19). The Marez study observed that 20% of the exposed group had chronic cough, compared to 1% in the control group. The spirometric results in this study showed mild airway obstruction that appeared during the work shift. The range of exposure in the study was 9 to 38.5 ppm. The means of exposure measurements at the two factories studied by Marez were 18.5 and 21.6 ppm.

The PEL for Molybdenum, insoluble compounds, as Mo is proposed to be changed by adding a respirable fraction limit of 3 mg/M³ to the current total dust limit of 10 mg/M³ and is necessary to control the levels of poorly soluble materials capable of reaching the deep areas of the lung. This respirable fraction limit was adopted by the ACGIH as a TLV in 2001 and was recommended by the Committee. The proposed limit is supported by the ACGIH document for Molybdenum, insoluble compounds.

The PEL for Molybdenum, soluble compounds, as Mo of 5 mg/M³ total dust is proposed to be replaced by a respirable fraction limit of 0.1 mg/M³ based on alveolar/bronchiolar epithelium metaplasia observed in mice at 10 mg/M³ by Chan, P.C, et al (ref 20). The proposed limit was recommended by the Committee and differs from the limit adopted by the ACGIH in 2001 of 0.5 mg/M³. The Committee felt that the use of a 10 mg/M³ as a no-observed-adverse-effect level in rats by the ACGIH in its TLV recommendation was inappropriate. The Committee referred to the Chan study and noted that the clear adverse effects noted in mice at 10 mg/M³ had not been accounted for in the ACGIH recommendation. The Committee also noted that the Chan study showed significant levels of lung cancers in male mice at 10 mg/M³. The proposed change is necessary to prevent adverse pulmonary effects observed in laboratory animals.

The STEL for Pentane is proposed to be deleted. The ACGIH deleted the 750 ppm TLV-STEL in 1998 based on a review of acute toxicity. The ACGIH concluded that the STEL was not justified based on the information included in their review. The Committee also did a literature search and came to the same conclusion and recommended that the STEL be deleted.

Pentyl Acetate is a general term used to describe three other acetate substances currently regulated with permissible exposure limits. Those substances are n-Amyl acetate, sec-Amyl acetate, and Isoamyl acetate. This term also applies to three other less common substances with similar molecular structure. Those substances are 3-Amyl acetate, tert-Amyl acetate, and 2-Methylbutyl acetate. These six substances comprise all the isomers of Pentyl acetate that can result from esterification of acetic and acid amyl alcohol. In 2000 the ACGIH consolidated the existing TLVs for these acetates into a single TLV of 50 ppm (266 mg/M³) and added STEL of 100 ppm (532 mg/M³). The change is necessary to control the eye and mucous membrane irritation that has been observed in human and animal studies. This limit was adopted by the ACGIH in 2000, and is consistent with the recommendation of the Committee. The proposed limit is supported by the ACGIH document for Pentyl Acetate.

The PEL for Propylene oxide is proposed to be changed from 20 ppm (50 mg/M³) to 1.0 ppm (2.5 mg/M³). The proposed limit is necessary to control harmful upper respiratory effects, and the possibility of nasal cancer that has been observed in several species of laboratory animals. This proposed limit differs from the 2 ppm TLV adopted by the ACGIH in 2001. The ACGIH limit was set based on non-cancer effects observed in laboratory animals. The advisory committee considered these effects and relied on a 1994 risk assessment by the USEPA (ref 21). This assessment estimated a carcinogenic risk of 1/10000 at 0.03 mg/M³ for 24 hour-7 day exposure. The Committee estimated that this was equivalent to a 1/1000 risk for an occupational exposure at 0.7 ppm propylene oxide. The Committee recommended 1.0 ppm on the basis of this estimated risk and the non-neoplastic effects cited by the ACGIH.

A new PEL for 1,3,5 Triglycidyl-s-triazinetriene is proposed at 0.005 mg/M³. This limit is necessary to control reproductive effects seen in laboratory animals and cytotoxic and alkylating capacity seen in human clinical trials for this compound. The proposed limit differs from the 0.05 mg/M³ TLV adopted by the ACGIH in 1997. The Committee generally agreed with the rationale stated in the documentation for this substance but felt that the limit needed to be lower given the anti-neoplastic properties of this compound and the carcinogenic risk associated with similar chemotherapeutic agents.

A new PEL for Vinylidene fluoride is proposed at 100 ppm (262 mg/M³). This limit is necessary to control liver toxicity that has been observed in laboratory animals and is similar to the effect observed with exposure to vinyl chloride and vinylidene chloride. The proposed limit differs from the ACGIH limit of 500 ppm adopted by the ACGIH in 1999. The Committee agreed with the ACGIH that vinylidene fluoride seemed 100 times less potent than vinyl chloride at causing liver toxicity, but recommended a limit of 100 ppm because the current PEL for vinyl chloride is 1 ppm as compared to the ACGIH TLV for vinyl chloride of 5 ppm.

DOCUMENTS RELIED UPON

1. "1997 Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices", American Conference of Governmental Industrial Hygienists
2. "1998 Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices", American Conference of Governmental Industrial Hygienists
3. "1999 Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices", American Conference of Governmental Industrial Hygienists
4. "2000 Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices", American Conference of Governmental Industrial Hygienists
5. "2001 Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices", American Conference of Governmental Industrial Hygienists
6. ACGIH Documentation for TLVs printed from "TLVs and Occupational Exposure values-2000", (a compact disk) for the following substances:

Acetone
Acrolein
Allyl alcohol
n-Butyl acrylate
Diethyl ketone
Di-sec-octyl phthalate
Epichlorohydrin
Ethyl butyl ketone
Ethyl cyanoacrylate
Ethyl tert-butyl ether
Flour dust
Glutaraldehyde
Maleic anhydride
Methyl methacrylate
Molybdenum, soluble compounds, as Mo
Pentane
Pentyl acetate
Propylene oxide
1,3,5-Triglycidyl-s-triazinetriene
Vinylidene fluoride

7. ACGIH document for Beryllium, 2001

8. ACGIH document for 2-Butoxyethanol, 2001
9. ACGIH document for Molybdenum, 2001
10. ACGIH document for Propylene oxide, 2001
11. Nelson et al, Journal of Industrial Hygiene and Toxicology, Vol 25, No.7, 282-285
12. NIOSH criteria document for ketones (NIOSH 78-173)
13. Kreiss et al, American Journal of Industrial Medicine, 30:16-25
14. Eisenbud et al, Journal of Industrial Hygiene and Toxicology, Sept 1949
15. Carpenter et al, A. M. A. Archives of Industrial Health, April 1956
16. Di Stefano et al, Allergy, 54:1105-1109
17. Marez et al, British Journal of Industrial Medicine, 50:894-897
18. Jedrychowski, Int Arch Occup Environ Health, 51:151-157
19. Mizunuma et al, Int Arch Occup Environ Health, 65:227-232
20. Chan et al, Toxicological Sciences, 45:58-65
21. Propylene oxide risk assessment by the USEPA, 04/01/1994
22. Gannon et al, Thorax 1995; 56:156-159
23. Vyas et al, Occup. Env. Med. 2000; 57:752-759

These documents are available for review from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks, Suite 350, Sacramento, California.

DOCUMENTS INCORPORATED BY REFERENCE

None.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE
IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal does not mandate the use of specific technologies and equipment.

COST ESTIMATES OF PROPOSED ACTION

The subject regulation is a revision of an existing regulation which specifies requirements for airborne contaminants. The primary users of these substances are the private industrial and chemical sectors. Those rare public sector workplaces where these substances are used should already be in compliance with the existing regulation, and the revised regulation should not necessitate any additional cost to remain in compliance. Based on this information, the additional expenditures for local and state governments to comply with the revised regulation are estimated to be none. Similarly, the large industrial companies have professional internal health and safety staff who are aware of the recommendations for exposure limits published by non-governmental organizations, such as the ACGIH. These companies normally control exposure to these limits as a matter of policy and to benefit employee relations. Based on this, the additional expenditures for these entities to comply with the revised regulation is estimated to be insignificant to none.

Costs or Savings to State Agencies

No significant costs or savings to state agencies is anticipated to result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposed changes will reduce the possibility of employee illness and improve productivity, increasing the ability of California businesses to compete with businesses in other states

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose significant nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, the regulation does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed regulation does not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed amendments may affect small businesses.

ASSESSMENT

The adoption of the proposed amendments to the regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.